



**Office of Appeals
U.S. Department of Housing and Urban Development
Washington, D.C. 20410-0001**

In the Matter of:

Aminata Yillah,
Petitioner

HUDOA No. 10-M-NY-AWG85
Claim No. 721005507

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Pro se

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For the Secretary

DECISION AND ORDER

On May 17, 2010, this Office received from Petitioner a request for hearing concerning a proposed administrative wage garnishment relating to debt allegedly owed to the U.S. Department of Housing and Urban Development ("HUD"). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government.

The administrative judges of this Office are designated to determine whether the Secretary may collect the alleged debt by means of administrative wage garnishment if contested by a debtor. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11, as authorized by 24 C.F.R. §17.170. The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner thereafter must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). In addition, Petitioner may present evidence that the

terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. *Id.* Pursuant to 31 C.F.R. §285.11(f)(4), on May 19, 2010, this Office stayed the issuance of a wage withholding order until the issuance of this written decision.

Background

On or around February 28, 2000, Petitioner executed and delivered to the Secretary a Partial Claims Promissory Note ("Note") in the amount of \$8,495.27 in exchange for foreclosure relief being granted by the Secretary. (Secretary's Statement ("Sec'y Stat."), filed June 11, 2010, ¶ 2; Ex. A.) Payment in full of the primary note makes the Note due and payable. (Sec'y Stat. ¶ 3; Ex. A, Note at ¶ 3(A)(i).) On or around October 11, 2001, the FHA insurance on Petitioner's primary note was terminated when the lender informed the Secretary that the primary note was paid in full. (Sec'y Stat., ¶ 4; Ex. B, Declaration of Brian Dillon, Director, Asset Recovery Division, HUD Financial Operations Center ("Dillon Decl."), dated June 8, 2010, ¶ 4.)

Petitioner is currently in default on the Note. (Sec'y Stat., ¶ 11.) The Secretary has made efforts to collect this debt from the Petitioner, but has been unsuccessful. (*Id.*) The Secretary alleges that Petitioner is indebted to HUD in the following amounts:

- a) \$5,930.53 as the unpaid principal as of June 3, 2010;
- b) \$27.07 as the unpaid interest on the principal balance at 5% per annum through June 3, 2010; and
- c) interest on said principal balance from June 4, 2010, at 5% per annum until the Note is paid in full.

(Sec'y Stat., ¶ 11; Dillon Decl., ¶ 5.)

A Notice of Intent to Initiate Administrative Wage Garnishment Proceedings, dated February 19, 2010, was mailed to Petitioner. (Sec'y Stat., ¶ 12; Dillon Decl., ¶ 6.) Petitioner was offered the opportunity to enter into a repayment agreement but declined to do so. (Sec'y Stat., ¶ 13; Dillon Decl., ¶ 7-8.) A Wage Garnishment Order, dated March 25, 2010, was issued to Petitioner's employer. (Sec'y Stat., ¶ 14; Dillon Decl., ¶ 9.) As of June 10, 2010, HUD had received two garnishment payments totaling \$881.50. (Sec'y Stat., ¶ 15; Dillon Decl., ¶ 10.) A third garnishment of \$324.42 had not yet been posted to HUD's account. (Sec'y Stat., ¶ 15; Dillon Decl., ¶ 10.) Due to a miscalculation by Petitioner's employer, these three garnishment payments represent approximately 25% of Petitioner's disposable income, rather than the 15% prescribed by 31 C.F.R. § 285.11(i)(2)(i). (Sec'y Stat., ¶ 16; Dillon Decl., ¶ 12.) Accordingly, Petitioner was entitled to a refund of \$606.98. (Sec'y Stat., ¶ 18; Dillon Decl., ¶ 14.) The Secretary's proposed repayment schedule remains at \$153.12 per pay period or 15% of Petitioner's disposable pay. (Sec'y Stat., ¶ 13; Dillon Decl., ¶ 10.)

Discussion

Petitioner challenges collection of the debt on the grounds that (1) the debt does not exist; and (2) the Secretary's proposed repayment schedule will create a financial hardship. (Petitioner's Hearing Request ("Pet'r Hr'g Req."), filed May 17, 2010.)

First, Petitioner claims that the loan does not exist. Specifically, she states: "We had a FHA loan and did not borrow any money from HUD for the purchase. The home was sold in 2002 and all liens on the property [were] addressed prior to settlement." (Pet'r Hr'g Req.) In support of this claim, Petitioner provided a settlement statement from her purchase of the home in December 1995. (*Id.*) Petitioner provided no documentary evidence of her claim that all liens on the property were addressed prior to her sale of the home in 2002.

The Secretary has provided credible evidence of the existence of the debt in the form of the Partial Claims Promissory Note signed by Petitioner on February 28, 2000. (Sec'y Stat., Ex. A.) The Secretary maintains that Petitioner remains liable for repayment of the debt because she has provided no evidence that it was repaid in accordance with the terms of the Note and has not established the existence of a valid release relieving her of her obligation to pay the debt. (Sec'y Stat., ¶ 10.) Therefore, the Secretary has met his burden of proof to show that the debt exists.

Petitioner filed a letter on October 18, 2010, in which she abandons her claim that the debt does not exist, asserting instead that repayment of the debt through administrative wage garnishment is causing a financial hardship. Petitioner states: "I cannot afford to pay [my debt], because I am in financial distress. . . . I am not making enough money to pay my bills." (Petitioner's Letter, filed October 8, 2010.) In support of her claim of financial hardship, Petitioner provided a copy of a mortgage payment check, two paystubs, two monthly bills, and a bank statement.

The Secretary is authorized to garnish up to 15% of a debtor's disposable pay, which is calculated by deducting health insurance premiums and any amount required by law to be withheld from the debtor's gross pay. 31 C.F.R. § 285.11(i)2(i), (c). Petitioner's pay statements indicate that in a two-week pay period her average gross pay is \$1929.56. After deducting \$276.91 for health insurance premiums (health: \$250.76; dental: \$17.89; vision: \$8.27) and \$361.86 for taxes (federal income tax: \$125.04; social security: \$102.06; Medicare: \$23.96; Maryland state income tax: \$110.41), Petitioner is left with disposable pay of \$1,290.79 bi-weekly or \$2581.58 monthly.

This Office will credit Petitioner for essential household expenses. Based on the documentation of expenses provided by Petitioner, this Office will credit Petitioner the following amounts per month: \$2,333.93 for her mortgage payment; \$148.83 for gas and electric; \$36.66 for telephone service;¹ and \$74.04 for gasoline for a total of \$2593.37.

¹ Petitioner's bill shows a monthly charge of \$109.99 for phone, internet, and cable television service, plus \$48.96 for "TV Additional Services." This Office will credit petitioner for only her phone service, which was calculated at one third of \$109.99.

Petitioner has not provided even an estimate of other essential expenses, such as food. While the bank statement shows six debits at fast food restaurants, this Office will not attempt to calculate total monthly food expenditures based on those figures alone. The bank statement also shows \$176.50 paid for an insurance premium. However, without further explanation of the type of insurance and frequency of premium payments, this Office cannot determine whether this insurance premium is an essential monthly expense and will not credit Petitioner for it as such.

A 15% garnishment rate of Petitioner's monthly disposable pay, as proposed by the secretary, would equal \$387.24, and leave petitioner with a balance of \$2,194.32 per month. Once petitioner pays the \$2593.37 in essential monthly expenses calculated above, Petitioner will be left with a negative remaining balance. Therefore, Petitioner has demonstrated that the Secretary's proposed repayment schedule would cause her financial hardship. A garnishment at any percentage of Petitioner's disposable pay would constitute a financial hardship sufficient to justify suspension of the collection action at this time.

Petitioner is advised that this Office is not authorized to consider any settlement offer or request for loan forgiveness on behalf of HUD. However, Petitioner may wish to discuss this matter with Counsel for the Secretary or Lester J. West, Director, HUD Financial Operations Center, 52 Corporate Circle, Albany, NY 12203-5121, who may be reached at 1-800-669-5152.

ORDER

The Order imposing the stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment shall remain in place indefinitely. For the reasons stated above, it is hereby

ORDERED that the Secretary shall not seek collection of this outstanding obligation by means of administrative wage garnishment at this time. The Secretary shall not be prejudiced from seeking administrative wage garnishment if, in the future, Petitioner's income increases or her essential household expenses are reduced.



H. Alexander Manuel
Administrative Judge

February 23, 2011